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Secretary of Natural Resources

COMMONWEALTH of VIRGINIA

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TECTON PRODUCTS LLC
FOR
TECTON PRODUCTS ROANOKE
EPA ID No. VAR000512350**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Tecton Products LLC, regarding Tecton Products Roanoke, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Site" means the Tecton Products LLC's Facility located at 5415 Corporate Circle in Roanoke County, Virginia.

6. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
7. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
8. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
11. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
12. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
13. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
14. "Tecton" means Tecton Products LLC, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Tecton Products LLC is a "person" within the meaning of Va. Code § 10.1-1400.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Tecton owns and operates the Facility in Roanoke County, Virginia. The Facility manufactures fiberglass building products. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Tecton submitted a RCRA Subtitle C Site Identification Form that gave notice of regulated waste activity at the Facility as an LQG of hazardous waste. Tecton was issued EPA ID No. VA000512350 for the Facility. In a subsequent form, Tecton gave notice as an LQG of hazardous waste and a Small Quantity Handler of Universal Waste at the Facility.
3. On September 23, 2008 and September 25, 2008, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations.
4. Inspection results showed that in apparent violation of 40 CFR § 262.11, Tecton failed to determine whether its solid wastes are hazardous wastes. Tecton failed to make a hazardous waste determination for waste streams one, two, and three. Consequently, Tecton failed to assign a D0001 hazardous waste code to waste stream one and D0001 and F0003 hazardous waste codes to waste stream two and three.
5. Inspection results showed that in apparent violation of 9 VAC 20-60-262 B.4, Tecton failed to notify the Department and document that the facility intends to accumulate hazardous waste in accordance with 40 CFR 262.34 prior to or immediately upon establishment of each accumulation area. Tecton failed to notify the DEQ of the relocation of two hazardous waste accumulation areas within the Facility.
6. Inspection results showed that in apparent violation of 40 CFR § 265.174, Tecton failed to inspect areas where containers are accumulated at least weekly and document the results of the weekly inspections. Tecton could not provide documentation to demonstrate weekly inspections of the hazardous waste accumulation areas for the period between July 2006 and December 17, 2007.
7. Inspection results showed that in apparent violation of 40 CFR § 264.1080, Tecton stored hazardous waste with a VOC content greater than 500 ppm and failed to comply with the requirements of Subpart CC for the control of air emissions from containers. Tecton could not provide documentation of its efforts to evaluate compliance with Subpart CC air emission requirements for containers.
8. Inspection results showed that in apparent violation of 40 CFR 265.16(d)(3), Tecton could not provide a written description for the type and amount of training that will be given to each person filling a position listed under 40 CFR § 40 CFR § 265.16(d)(1). Tecton's hazardous waste training program did not outline or define the type or amount of both introductory and continuing training that will be given to employees managing hazardous wastes.

9. Inspection results showed that in apparent violation of 40 CFR § 265.16(d)(2), Tecton could not provide job titles, names of employees filling the positions, job descriptions or duties related to hazardous waste management.
10. Inspection results showed that in apparent violation of 40 CFR § 265.16(d)(4), Tecton could not provide documentation that hazardous waste training for employees with hazardous waste management responsibilities had been provided during calendar years 2006 and 2007.
11. Inspection results showed that in apparent violation of 40 CFR § 268.9(d), Tecton failed to place a one-time notification or certification in its operating filed to document the de-characterization of waste stream No. 1 to meet Land Disposal Restriction treatment standards.
12. Inspection results showed that in apparent violation of 40 CFR § 268.7(a)(1), Tecton failed to determine if its hazardous wastes No. 1, No. 2, and No. 3 have to be treated before land disposal by determining if the hazardous wastes meet the treatment standards in 40 CFR § 260.40, § 268.45, or § 268.49 and the special requirements for characteristic hazardous wastes in § 268.9.
13. Inspection results showed that in apparent violation of 40 CFR § 270.1, Tecton failed to obtain a permit for the treatment of hazardous waste as identified or listed in 40 CFR § 261. Tecton treated F003 hazardous waste in a thermal treatment unit (curing oven) without a permit.
14. Inspection results showed that in apparent violation of 40 CFR § 273.14(d) and 40 CFR 273.14(d)(1), Tecton, as a small quantity handler of universal waste (UW), must manage lamps in a way that prevents releases of any universal waste or component of universal waste to the environment. At the time of the inspection, containers holding the fluorescent bulbs were not closed; the cylindrical cardboard tube being used for storage did not have a lid to secure the container.
15. On November 24, 2008, based on the inspection and follow-up information, the Department issued a Notice of Violation to Tecton for the violations described in paragraphs C4 through C14, above.
16. On December 8, 2008, representatives from Tecton contacted the Department in response to the NOV. On December 30, 2008, Department staff met with representatives of Tecton to discuss the violations.
17. On January 5, 2009, Tecton submitted a written response to the NOV.
18. On April 21, 2009, Tecton submitted an additional written response to the NOV.

19. Based on the results of the September 23, 2008 and September 25, 2008 inspection, the Board concludes that Tecton has violated the Virginia Waste Management Act, as described in paragraphs C4 through C14, above.
20. Tecton has submitted documentation that verifies that the violations described in paragraphs C4 through C14, above, have been corrected.
21. On September 28, 2009, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection, Department compliance staff confirmed that Tecton has corrected the violations described in paragraphs C4 through C14.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Tecton, and Tecton agrees to pay a civil charge of \$44,642 in settlement of the violations cited in this Order. The civil charge shall be paid in four quarterly payments of \$11,160.50. The first payment is due no later than 30 days after the effective date of the Order. The second payment is due no later than 120 days after the effective date of the Order. The third payment is due no later than 210 days after the effective date of the Order. The fourth payment is due no later than 300 days after the effective date of the Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Tecton shall include its Federal Employer Identification Number (FEIN) [45-0425594] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tecton for good cause shown by Tecton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any

action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Tecton admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Tecton consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tecton declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tecton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tecton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Tecton shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tecton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Tecton intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tecton. Nevertheless, Tecton agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Tecton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tecton.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tecton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tecton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Tecton certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Tecton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tecton.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Tecton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21ST day of DECEMBER, 2009.

A handwritten signature in cursive script, reading "Steven A. Dietrich". The signature is written in dark ink and is positioned above a horizontal line.

Steven A. Dietrich, Regional Director
Department of Environmental Quality

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Tecton Products LLC voluntarily agrees to the issuance of this Order.

Date: 11-13-2009 By: Scott R. Johnson, Plant Manager
Scott R. Johnson
Tecton Products LLC

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 13th day of November 2009, by Scott R. Johnson who is the Plant Manager of Tecton Products LLC, on behalf of the corporation.

[Signature]
Notary Public

Registration No. _____

My commission expires _____

Notary seal

